IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 22701 of 2002

Between:

1 Govt of A.P Rep by its Prl.Secretary
Home Dept , Secretariat Hyderabad.
2 The Director General and Inspector General Of Police
A.P., Hyderabad
3 IG of Police Training
O/o.D.G. & I.G of Police , Saifa Bad Hyderabad . A.P.
4 Dy.I.G. Of Police , Traning
O/o.D.G. & IGP , Saifabad Hyderabad , A.P.
5 The Commandar XI AAPSP (IR) Bn.,
Bhakarpet , Cuddapah
6 R.S.I., Traning
XI A.P.S.P. (IR) Battalion Bhakarapet , Cuddapah.

..... PETITIONERS

AND

K.Subbaram Ex.Stipendary PC 149

R/o Buggalapalli (village) Nagi Reddy

Palli (Post) C.K.Dinne (Mandal)

Cuddapah District

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to

issue a writ proceedings more particularly one in the nature of writ of certiorari calling for the records pertaining to the orders Dt: 23-8-2002 passed in O.A.No.5105 of 2002, on the file of the Hon'ble A. P. Administrative Tribunal Hyderabad and quash the same as illegal and arbitrary and pass such other order or orders.

Counsel for the Petitioners: GP FOR SERVICES I

Counsel for the Respondent : MR.A.HANUMANTHA REDDY

The Court made the following :

O R D E R **(Per the Hon'ble Sri Justice G.Bikshapathy)**

The writ petition is filed by the Government challenging the order passed by the Andhra Pradesh Administrative Tribunal in O.A.No.5105/2002 dated 23.8.2002.

2. The respondent was selected as a Police Constable in the recruitment made by the competent authority and he was sent for training on 5.11.1999. However, during the training, he fell sick on 10.7.2000 and 9.10.2000 and after discharge, he again fell sick from 17.10.2000 to 22.10.2000. Thereafter, the respondent went for treatment at his house. However, he again reported for duty with medical certificate on 27.3.2001, 4.9.2001, 20.11.2001, 12.4.2002 and 9.5.2002. But no orders were issued by the authorities concerned. Ultimately, he filed O.A. before the Tribunal, seeking appropriate directions. During the pendency of the O.A., it was brought to the notice of the Tribunal that the respondent was discharged from service on 30.5.2002. Therefore, the said discharge was also came to be challenged. The Tribunal after considering the respective contentions, held that discharge was not sustainable and accordingly directed the authorities to reinstate the respondent into service and send him for the balance training and also directed to award such punishment to the respondent, which is proportionate to the delinquency, other than discharge from service. Assailing the said order, the present writ petition is filed.

3. The learned counsel for the petitioners submits that the respondent remained unauthorizedly absent from 22.10.2000 and did not intimate to any authority so far and therefore, after receipt of report from the competent authority, discharge order

was passed on 30.5.2002 and in these circumstances, the order passed by the Tribunal is unsustainable and liable to be set aside.

4. On the other hand the learned counsel for the respondent submits that respondent has been intimating about the medical treatment being taken by him and also reported to duty on several occasions, but he was not allowed to enter the training and, therefore, the respondent cannot be found fault with and hence the writ petition is liable to dismissed.

5. The only issue that arises for consideration is, whether the order of discharge is not sustainable and whether the order of the Tribunal is legal and valid?

6. The facts as to the selection of the petitioner as Police Constable and sending him for training, are not in dispute. During the training, he fell sick twice. On 22.10.2000, he left to his house for private treatment. As can be seen from the averments made in the O.A., respondent has explained as to how many times he went to the authorities and having no response, approached the Tribunal. In this regard, paragraph No.(iv) in the application filed before the Tribunal, is relevant and the same is extracted as under:

> *"On 27-03-2001 the applicant report at the Battalion Head Quarters with the above mentioned Medical Certificates but the sixth respondent sent the applicant away without taking the applicant for duty. A few days later the applicant again went but the sixth respondent did not take the applicant to duty but sent him away. Later, the applicant came to Hyderabad and met the fourth respondent i.e., D.I.G., Training, Sri Ish Kumar, IPS., in the second respondent's and gave a representation with a request to take him to duty. The fourth respondent told the applicant that he would send the applicant for training along with the next batch. The applicant waited for communication from the fourth respondent but the applicant did not receive any communication. On 04.09.2001 the applicant met the fourth respondent and who promised the applicant to look into the matter and would call for the file and circulate it to the third respondent i.e., IG, Training. The applicant waited for two/three days and again met the fourth respondent. The fourth respondent told the applicant that he would send the orders to the Battalion Head Quarters. But the*

fourth respondent did not send any orders and by that time the next batch also completed the training. Again the applicant met the fourth respondent on 20-11-2001 with a request to send him to duty but no orders were issued. Therefore, the applicant gave a representation to the second respondent on 12-04-2002 with a request to consider his case sympathetically on humanitarian grounds and to permit him to undergo his training in the next batch. But so far no orders are issued. Again the applicant gave another representation to the second respondent on 09-05-2002 but no orders are issued."

7. As against the above averments, there is no specific counter before the Tribunal. At paragraph No.2, of the counter, it is stated as under:

"In reply to the averments made in para No.6(i) to (iv) of the O.A., it is respectfully submitted that the applicant K.Subbaram Ex.STPC 149 was one among the other STPCs recruited in XI Bn., APSP Cuddapah w.e.f. 10.7.2000 in D.O.No.224/2000. It is submitted that the applicant while undergoing training reported sick on 9.10.2000 after availing 7 days vacation holidays. He was issued with passport to appear before the Government Hospital, Cuddapah for treatment. The Medical Officer, Govt. Hospital examined him and admitted in Government Hospital for treatment. He was however discharged from Headquarters Hospital, Cuddapah on 12.10.2000 with an advise to take rest for 10 days w.e.f. 12.10.2000. However, the applicant did not avail the rest but attended the training with a request that he may be given exemption from running and B.O.A.C. Again on 17.10.2000, he complained of chest pain and he was directed to appear before the Unit Medical Officer, XIBn., Cuddapah. The Unit Medical Officer, XI APSP Cuddapah examined him and advised him to take 5 days rest from 17.10.2000 to 22.10.2000. The applicant was due for training on 22.10.2000. He did not turn up for training but absented unauthorisedly.

It is further respectfully submitted that the applicant has come up with a plea that he proceeded to Chagalmarry, Kurnool District to take rest where he again suffered with chest pain. He took treatment in Govt. Hospital Chagalmarry till 26-3-2001 and was found fit for duty from 27.3.2001 by the Medical Officer, Govt. Hospital, Chagalmarry. The contention of the applicant is nothing but an afterthought. The applicant was expected to be at Bn., HQ Bhakarapet and there was no need for him to proceed to Chagalmarry to take rest for his alleged sickness without obtaining permission from his superiors to leave Headquarters. It is submitted that according to the instructions contained in para 10 under leave vide G.O.Ms.No.315 Home Police Department, dated 13.10.1999 and C.O. A/M Rc.No.146/R & T/3/2000 dt. 18.9.2000, the applicant was rightly discharged from training as he absented from training for more than 30 days on the grounds of alleged

sickness. The discharge orders contained in proceedings C.No.85/Trg.3/2001 dt.-05-2002 received in Bn., Office on 3.6.2002 were sent to the OC Hqrs for causing service on the applicant on 11.6.2002. But the applicant in order to avoid the receipt of the discharge order, left his native place and filed O.A. before this Hon'ble Tribunal. These orders were sent to the applicant to his native address through special messenger for causing service. But these orders could not be served on the applicant as he was not available at his native address. Hence the contention of the applicant that he was not issued with any orders is not correct."

8 . In view of the above reply in the counter, the Tribunal has correctly assessed the substratum of the counter, and observed that practically all the contentions of the respondent/applicant are admitted in the counter. Thus it is not in dispute that the respondent had been keeping the authorities in picture about his treatment and his report. In fact, he reported for duty on 27.3.2001. For the reasons best know to the authorities, he was not taken to duty. If really this is a misconduct under the rules, nothing could have prevented the authorities from proceeding with the matter after allowing him to resume the training. But a reading of the discharge order clearly shows that as if the respondent has not made any representation or did not report to duty at all. This only shows that in order to suppress the fact of reporting of the respondent on several occasions, the order was passed on 30.5.2002, that too after filing of the O.A. and when it was being posted for interim orders from time to time. Thus we find that the order passed by the authorities on 30.5.2002 is wholly unsustainable and cannot be salvaged under any circumstances and the Tribunal has rightly quashed the discharge order and directed reinstatement of the respondent for undergoing balance training. But as the Tribunal has not directed appointment of the petitioner after undergoing training, we modify the order of the Tribunal as under:

" After undergoing balance training, respondent shall be appointed as a

Police Constable in accordance with rules. The seniority and other benefits have to be worked out by the petitioners in accordance with the relevant standing orders and the rules."

9. The writ petition is accordingly disposed of. No order as to costs.

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G.Bikshapathy, J.

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P.S.Narayana, J.

25th April, 2005.

Avs/KM

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Prl. Secretary
Govt of A.P. Home Dept , Secretariat Hyderabad.
2 The Director General and Inspector General Of Police
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7. 2 CCs to G.P. for Services –I, High Court Buildings,

Hyderabad (OUT)

8. 2 CD copies

9. The Registrar, A.P.Administrative Tribunal, Hyderabad.

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